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News

50

Monday

Monday

News

» Local News »

Opinion

Personal Tech

Sports Extra

Currents & Arts

The Last Week

Sunday

Monday

Tuesday

Wednesday

Thursday

Friday

Saturday

Weekly Sections

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County rocks boat with water legislation

Pollution regulators, environmentalists upset

By Terry Rodgers

STAFF WRITER

March 17, 2003

San Diego County has put itself into an awkward if not contradictory political position that has exposed it to criticism from clean-water advocates.

As the leader of an effort to enact tough storm water discharge rules, county government in 2001 agreed to take charge of the region's efforts to curb polluted runoff.

But earlier this month, county officials wrote and sponsored a bill that would unravel the state's authority to enforce storm water pollution controls on local government.

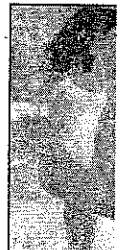
Pollution regulators and environmentalists say the county's legislative assault casts doubt on its commitment to cleaner recreational waters.

John Robertus, executive director of the San Diego Regional Water Quality Control Board, a state agency that enforces the Clean Water Act, called the county's legislative initiative "an unnecessary distraction."

"This is like attacking to the rear when everyone else is going the other way," Robertus said. "For the county to dissipate their resources on this effort is very disturbing."

"There hasn't been a clamor from the cities for this, and I haven't heard a hue and cry from citizens to do this."

Developers, who lost a recent lawsuit challenging the regulations,

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appear to be the most likely supporters.

Assembly Bill 1517, was written by Senior Deputy County Counsel Rod Lorang. The Board of Supervisors never voted on the draft bill before it was presented to Assemblyman George Plescia, R-San Diego, who introduced it earlier this month. Supervisors Ron Roberts and Dianne Jacob support the bill, while Supervisors Pam Slater and board chairman Greg Cox do not. Supervisor Bill Horn declined to be interviewed.

The bill proposes that urban runoff should be "managed as an environmental resource" rather than classified as a pollutant.

Discharges from storm drains that foul streams, rivers and the ocean "are an inevitable consequence of rainfall" and "should not be prohibited directly or indirectly" by the state, the bill states.

In addition, the bill would make it difficult to penalize municipalities that fail to comply with state regulations, which places the responsibility on local government to be on the front line of enforcement against urban runoff pollution.

Jack Minan, a University of San Diego law professor who chairs the regional water quality board, said the bill would trigger "a major restructuring" of storm water pollution regulations.

"I think it's conceptually flawed," Minan said. "You can't say storm water doesn't contain waste and therefore is beyond the ability of the state to regulate it."

Urban runoff – the leading cause of beach closures in Southern California – is water from rain, excess irrigation or other sources that picks up bacteria, roadway oil and other contaminants as it drains into rivers, lakes and streams.

Lorang said he was authorized to write the legislation under a board resolution approving the county's annual legislative priorities.

That resolution, however, does not expressly state the county's intent to write and sponsor legislation to undercut the state's authority to regulate urban runoff.

The resolution expresses a desire for legislation that "would provide that permits issued for storm water discharges allow or encourage state and local programs that are effective, cost-effective and well coordinated."

Lorang said the bill he authored reflects supervisors' view that the state's regulations are too restrictive on local government and are too cumbersome and expensive to implement.

Fodder for the bill was gathered from supervisors' discussions at

public hearings and in closed session, he said.

"The board in closed session directed us to do things legislative . . . to have legislative proposals," Lorang said. "The board in open session passed a policy related to legislation in this area."

Lorang declined to elaborate on what provisions in his bill were derived from closed-door discussions among supervisors.

"I'll say we had direction from the board concerning legislative proposals in closed session," he said. "That's all I'll say. Closed sessions are closed."

State law does not allow private discussions by a quorum of elected officials on the topic of proposed legislation, said Terry Francke, chief counsel for the California First Amendment Coalition.

Deliberations about legislation "are purely political and they need to be purely public," Francke said.

While supervisors had the opportunity to air their views, the public was never allowed to comment on the proposed legislation.

San Diego Councilwoman Donna Frye, a longtime clean-water advocate, said the county's proposed legislation represents a major policy statement that deserved a more thorough public debate.

"You don't go into closed session to craft legislation," Frye said. "Closed session is to protect the public interest, not hide from the public."

Slater said she agrees the process could have been more open.

"Legislation generated by the county deserves further public review and public input," she said.

Roberts said some of board's views on the inadequacies of state law emerged during closed-session discussions about a lawsuit by the building industry challenging the state storm water discharge permit.

"There was never direction given in a closed session regarding specifics of what to include in legislation," Roberts said.

Jacob offered the same explanation and denied that too much was discussed in private.

"The legislation carries out exactly what the board has asked for," Jacob said.

"In order to get the job done, we need practical solutions and measurable outcomes. Under the current permit, we don't have that."

The permit issued 18 months ago requires the county, the region's 18 cities and the port district to hire or retrain inspectors to ensure new development and major redevelopment do not increase urban runoff pollution.

Cities that fail to mount a credible enforcement and public education effort can be fined by the Regional Water Quality Control Board.

The permit is up for renewal every five years, but any of the local governments can initiate a public hearing to amend the permit simply by submitting a petition to the regional board.

"To the extent that there are problems, the right way to work them out is through the regional board," Minan said.

The county's bill, which is likely to encounter resistance from environmentalists, "is unproductive in my view," Minan said.

David Beckman, an attorney with the Natural Resources Defense Council in Los Angeles, said he considers San Diego County's storm water permit to be among of the best in the state.

"There's no question it requires local government to do more than it has done in the past," Beckman said. "But given how little was done in the last decade, it was long overdue."

Environmentalists say the county's bill would reverse the current momentum to combat urban runoff, an insidious form of pollution now considered the greatest threat to beaches, lagoons and streams in Southern California.

"This would absolutely weaken existing storm water pollution prevention law and result in more water that wouldn't be safe for swimming or for aquatic life," said Mark Gold, executive director of Heal the Bay, a Los Angeles-based nonprofit group that advocates for clean water.

County officials did not attempt to recruit input from environmentalists or build a coalition in support of the legislation before it was taken to Plescia, a freshman Republican who has yet to advance a bill to the governor's desk.

Roberts, a political veteran, acknowledged that the county's bill "doesn't look like it was set up for a home run."

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